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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13
14 TP-LINK USA CORPORATION,
15 Plaintiff,

16 v.

17 ADAM & SORA STARKE,
18 Defendants,
19 and
20 CAREFUL SHOPPER, LLC, *et al.*
Defendant-Counterclaimant-
Third-Party Plaintiff,

21 v.

22
23 TP-LINK NORTH AMERICA INC,
24 and
25 AUCTION BROTHERS, INC.
dba AMAZZIA,
26 Third-Party Defendants.

CASE NO: 8:19-cv-00082-JLS-KES

**CAREFUL SHOPPER'S BRIEF IN
OPPOSITION TO TP-LINK'S
NOTICE OF MOTION AND
MOTION TO FIX ATTORNEYS
FEES AND COSTS IN
CONNECTION WITH MOTION TO
STRIKE (ECF 92)**

*[Filed concurrently with Declaration of
Mark Schlachet]*

Hearing Date: TBD
Hearing Time: TBD
Courtroom: 10A

Complaint filed: January 15, 2019

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I. OVERVIEW

Careful Shopper originally brought suit against TP-Link in the Eastern District of New York on May 22, 2018. *Careful Shopper, LLC v. TP-Link USA Corp., et al.*, No. 1:18-cv-03019-RJD-RML (E.D.N.Y. 2018). TP-Link then initiated the instant action on January 15, 2019, joining Careful Shopper's managing member and his wife (the "Starke defendants") along with Careful Shopper itself. The parties filed their joint Rule 26(f) Report on November 1, 2019 (ECF 34). Careful Shopper contributed: "**Consideration of Anticipated Counterclaims in Case Management.**" (*Id.* at p. 6). Thus advised, TP-Link responded: "[i]f Defendants file any counterclaims, Plaintiff may file a motion to dismiss," (*Id.* at p. 8) but TP-Link did not disclose any contemplation of filing an anti-SLAPP motion.

Had TP-Link disclosed a contemplated anti-SLAPP motion, the litigation would have taken far less resource-intensive directions. Discovery would have been stayed because "denying a stay would risk defeating the purpose of anti-SLAPP immunity." *Mireskandari v. Daily Mail*, 2013 U.S. Dist. LEXIS 199145, at *8 (C.D. Cal. Jan. 14, 2013). As shown above, Careful Shopper *did* disclose its intent to file the counterclaims in the Rule 26(f) Report; and TP-Link *did* report therein its intent to file a motion to dismiss. Why didn't TP-Link also disclose November 1, 2019 that it *may* file an anti-SLAPP motion, importing a stay of discovery? Or on November 12, 2019 when it was served with the counterclaims?

Careful Shopper filed its Answer and Counterclaims/Third Party Complaint on November 12, 2019. Defendants Starke answered the complaint but *did not* counterclaim or third-party complain against TP-Link or Amazzia.¹ Hence, defendants Starke may *not* be held liable for anti-SLAPP attorney fees. Cf. *Lightbourne v. Printroom Inc.*, No. SACV 13-876-JLS (RNBx), 2015 U.S. Dist. LEXIS 193034, at *26-27 (C.D. Cal. Dec. 10, 2015).²

The parties served Rule 34 Requests on or about November 18, 2019. TP-Link did not disclose its intent to file an anti-SLAPP motion until December 19, 2019. TP-Link did not indicate to Careful Shopper, at any time prior to January 7,

¹ TP-Link's Motion to Strike and/or Dismiss was addressed only to Careful Shopper. The first sentence of its supporting memorandum reads: "Careful Shopper's Amended Counterclaims and Third-Party Complaint ("ACC"), ECF No. 54, seek damages for TP-Link USA Corporation and TP-Link North America, Inc.'s (together, "TP-Link") exercise of their constitutionally and statutorily protected rights." See ECF 62 at p.1. This single mention of defendants Starke merely recites their role as defendants in the underlying complaint. *Id.*

² The court, we believe inadvertently, identified defendants Starke as counterclaimants in ECF 82, p.1: "[b]efore the Court is Plaintiff and Counter Defendant TP Link's Motion to Strike or Dismiss the counterclaims asserted by Defendants and Counterclaimants Careful Shopper, LLC, Sora Starke, and Adam Starke." And at *id.*, p.6n.6 the court stated: "For the purposes of this Motion, Defendants and Counterclaimants Careful Shopper, LLC, Sora Starke, and Adam Starke stand in the proverbial "shoes" of a plaintiff asserting claims challenged via an anti-SLAPP motion." TP-Link has submitted a proposed order which embraces defendants Starke, contrary to what we believe would be the court's intent, now having been advised of the apparent inadvertence.

2020, any interest is staying discovery. By that time Careful Shopper had produced 12,717 documents, a privilege log, and numerous proposed protective orders.

During dozens of substantive interactions, no indication of an anti-SLAPP motion.

On January 17, 2020 TP-Link filed its Motion to Strike and/or Dismiss. ECF 62. The court in ECF 82 struck Careful Shopper's state law counterclaims and granted TP-Link leave to file an application for compensation. On April 20, 2020 TP-Link filed its application for \$122,849.50 covering all (non-antitrust related) hours in the case since November 12, 2019.

It is Careful Shopper's strong belief that the instant fee application for \$122,849.50 runs afoul of *Mireskandari v. Daily Mail Gen. Tr. PLC*, 2014 U.S. Dist. LEXIS 201202, at *7 (C.D. Cal. 2014) ("counsel may not leverage the statute to obtain an 'unjust' award. *Serrano v. Unruh*, 32 Cal.3d 621, 635, 186 Cal. Rptr. 754, 652 P.2d 985 (1982))." TP-Link in our view—as we will attempt to establish—executed a strategy of scorched earth,³ maximum litigation, rendering at

³ TP-Link counsel has threatened Rule 11 and other sanctions no fewer than 10 times in this litigation. One episode, which TP-Link mischaracterizes at Mem. (ECF 92) p.5, saw TP-Link confrontationally threaten Local Counsel James Shah that it, TP-Link, would advise Judge Staton that such local counsel was taking *his client* Careful Shopper's position that relevancy objections to Rule 34 requests are waived if not timely raised. This is what TP-Link now represents to the court as undersigned's "positions so far outside what is considered appropriate." Undersigned was and is correct, i.e. in Judge Staton's and Magistrate-Judge Scott's courtrooms, unraised objections (aside from privilege) are waived. See *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992); *Okada v. Whitehead*, No. 8:15-cv-01449-JLS-KESx, 2017 U.S. Dist. LEXIS 169147, at *6

most \$16,333.20 of its fee application compensable.

II. TP-LINK/AMAZZIA’S ANTI-SLAPP MOTION AND PROCEEDINGS THEREON

A. Making a Prima Facie Showing

In its brief in support of the anti-SLAPP privilege, TP-Link/Amazzia argued that the moving party’s burden is “only to make a prima facie showing of protected activity, which is ‘not an onerous one.’” ECF 62 at p. 6. Part of that burden was to demonstrate a “contemplated litigation in good faith and under serious consideration.”⁴ The same or similar requirement obtains as to the California Litigation Privilege. *Edwards v. Centex Real Estate Corp.*, 53 Cal. App. 4th 15, 34-35, 61 Cal. Rptr. 2d 518, 530 (1997).

TP-Link/Amazzia’s non-onerous showing was based in critical measure upon TP-Link counsel’s representation that “[a]t-issue pre-suit communications with Amazon were unquestionably in furtherance of TP-Link’s litigation conduct.” ECF 62 at p. 10. This was the only support in ECF 62 or ECF 78 addressing the

(C.D. Cal., 2017) The rule applies specifically to relevancy objections. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D. 652, 657 (C.D. Cal. 2005) ; *Safeco Ins. Co. of America v. Rawstrom*, 183 F.R.D. 668, 671-72 (C.D. Cal. 1998). TP-Link doggedly insisted on raising, and directing discussion to, relevance objections for the first time at the Local Rule 7-3 conference. Mr. Shaw became unnerved when threatened with an ill-founded assault on his and his firm’s reputation and credibility.

⁴ *P6 LA MF Holdings SPE, LLC v. Shekhter*, 2017 U.S. Dist. LEXIS 220299, at *38 (C.D. Cal. 2017); *Dickinson v. Cosby*, 17 Cal. App. 5th 655, 683, 225 Cal. Rptr. 3d 430, 455 (2017).

1 “litigation conduct” prerequisite to “protected activity.”⁵ This court expressed an
 2 uneasiness in that the “exact language of those communications is not in the record.”
 3 ECF 82 at p. 12. The court nevertheless found that TP-Link/Amazzia had made
 4 their *prima facie* showing for “protected activity,” we believe, based materially
 5 upon a position of counsel not warranted under existing law.
 6
 7

8 **B. Careful Shopper’s Efforts to Secure the At-Issue Communications**

9 Careful Shopper commenced discovery on or about November 18, 2019,
 10 following the Rule 26(f) conference, requesting “[a]ll documents from Amazzia
 11 concerning the reporting of non-complaint sellers to Amazon.” TP-Link responded:
 12 “TP-Link objects to this Request as vague, overbroad, unduly burdensome, and
 13 ambiguous, especially in its use of the phrase “concerning the reporting of non-
 14 compliant sellers to Amazon.” Careful Shopper also requested “[a]ll documents
 15 concerning the IP Complaints lodged with Amazon on or about March 31, 2018 and
 16 April 9, 2018 with the following complaint ID numbers: 1574766671, 1574766551,
 17 and 1594857291.” TP-Link responded as follows: “TP-Link objects to this Request
 18
 19
 20
 21

22
 23 ⁵ Counsel’s representations can play an important role in judicial decision-making.
 24 The Supreme Court relies upon them on occasion. See *Frisby v. Schultz*, 487 U.S.
 25 474, 490, 108 S. Ct. 2495, 2505 (1988)(“ The Court endorses a narrow construction
 26 of the ordinance by relying on the town counsel's representations.”) See
 27 *Dynabursky v. Alliedbarton Sec. Servs., LP*, No. SACV 12-2210-JLS (RNBx), 2016
 28 U.S. Dist. LEXIS 194274, at *23 (C.D. Cal. Aug. 15, 2016)(“ Based on
 Class Counsel's representations, and in light of the size of the class . . . the Court
 concludes . . .”).

1 as vague, overbroad, unduly burdensome, and ambiguous, especially in its use of the
 2 phrase “[a]ll documents concerning the IP Complaints lodged with Amazon.” TP-
 3 Link produced zero responsive documents As stipulated in ECF 66, p.5: “Careful
 4 Shopper [promptly began] the process to compel discovery responses from TP-Link
 5 under Local Rule 37.”
 6
 7

8 **C. A Surprise Witness**

9 Subsequent to this court’s anti-SLAPP ruling on March 23, 2020 (ECF 82),
 10 Careful Shopper learned of the March 6, 2020 transcript of William Fikhman. See
 11 Deposition of William Fikhman in *Solu-Med, Inc. v. Youngblood Skin Care*
 12 *Products, Inc.*, Case No. 19-cv-60487 (S.D. FL) at ECF 107-1 (referred to as “F.
 13 Dep.” and annexed hereto in relevant part as Exhibit 1). See S. Dec. at ¶3. Mr.
 14 Fikhman was deposed as the Amazzia “person most knowledgeable” on December
 15 10, 2019. F. Dep. at 9:14-25.
 16
 17

18 Mr. Fikhman identified and authenticated a certain writing (Exhibit 2 hereto,
 19 see S. Dec. at ¶4), as “verbiage that may have been used when we submit a
 20 complaint to Amazon.” See F. Dep. at 86:13-87:8. Mr. Fikhman affirmed that
 21 Amazzia created the language. *Id.* at 88:7-11. This was the first discovery of actual
 22 IP counterfeit complaint language utilized by Amazzia. Mr. Fikhman also testified
 23 that “all of our reporting processes are actually very methodical and organized and
 24 strategic” (*Id.* at 54:5-6) This verbiage was used during the 2018 timeframe at suit.
 25
 26
 27
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1 See *Thimes*, cited *infra*, at ECF 102-1, p.3 at ¶4. This language does not evidence—
 2 does not hint at-- “contemplated litigation in good faith and under serious
 3 consideration.”
 4

5 It is unlikely that the communications for which TP-Link/Amazzia sought
 6 anti-SLAPP/California Litigation Privilege protection herein were not identical or
 7 similar to the above-quoted Amazzia language sent to Amazon vis-à-vis
 8 Youngblood Skin Care Products. As Mr. Fikhman testified: Amazzia reporting was
 9 “methodical and organized and strategic.” We annex the relevant document as
 10 Exhibit 2.
 11

12 Mr. Fikhman would later, on March 30, 2020, file a wholly inconsistent
 13 declaration before Judge Anderson in the related litigation of *Thimes Solutions, Inc.*
 14 *v. TP-Link USA Corporation, et al*, Case 2:19-cv-10374-PA-E, ECF 101-2, Exhibit
 15 3 hereto. See ECF 88 at p.2n.2. **Importantly, neither Amazzia’s real time,**
 16 **recorded 2018 language nor its newfound, recollected “bundle of rights”**
 17 **language, contains a hint of contemplated litigation, let alone good faith**
 18 **contemplation of litigation. Two sets of verbiage without a hint of litigation.**
 19

20 When a “surprise witness” such as Mr. Fikhman contradicted counsel’s
 21 representations, “the appropriate sanction was to exclude that testimony.” *Taylor v.*
 22 *Illinois*, 484 U.S. 400, 401, 108 S. Ct. 646, 649 (1988). By excluding TP-Link
 23 counsel’s “litigation conduct” representation here, TP-Link/Amazzia’s argument for
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1 good faith contemplation of litigation fails the *prima facie* test. By failing the *prima*
 2 *facie* test TP-Link, in all equity, is not entitled to be compensated as the prevailing
 3 anti-SLAPP movant. See Motion for Reconsideration, ECF 88.

4
 5 It was fundamentally unfair for TP-Link and Amazzia, a co-movant, to
 6 withhold its “verbiage that may have been used when we submit a complaint to
 7 Amazon.” Arguments and representations to achieve unjust results were made
 8 feasible because discovery obligations were trampled and this court’s Local Rules
 9 were weaponized.⁶ The privilege was used “both as a sword and a shield.” *Bittaker*,
 10 331 F.3d at 719 (quoting *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th
 11 Cir. 1992). *Cf. Adkins v. Wells Fargo Bank, N.A.*, 2011 U.S. Dist. LEXIS 170001,
 12 at *4 (C.D. Cal. 2011) (“The Court is particularly troubled”)

13 **D. “Special Circumstances” Can Reduce or Eliminate Compensation**

14
 15 It is well-established that “[t]o the extent a trial court is concerned that a
 16 particular award is excessive, it has broad discretion to adjust the fee downward or
 17 deny an unreasonable fee altogether.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138,
 18 104 Cal. Rptr. 2d 377, 17 P.3d 735 (2001). California law recognizes “special
 19 circumstances” warranting the reduction or denial of even mandatory, statutory
 20 attorney fees. *In re Taco Bell Wage & Hour Actions*, 222 F. Supp. 3d 813, 830 (E.D.
 21

22
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 26 ⁶ Under Rule 3.1(a)(2) of the California Rules of Professional Conduct a lawyer is
 27 prohibited from “present[ing] a claim or defense in litigation that is not warranted
 28 under existing law.” It appears (see *Neeville*, *Sparrow* and Exhibit 2 hereto) that the
 “litigation activity” representation was not warranted by existing law.

1 Cal. 2016).

2 TP-Link pursued a coherent strategy to proliferate as much litigation as
3 possible until the deadline to the anti-SLAPP motion drew near. TP-Link concealed
4 its intent to bring an anti-SLAPP motion in the Rule 26(f) report,⁷ thereby fomenting
5 discovery and the full implementation of Local Rule 37 procedures, unnecessarily
6 spent approximately 43.7 hours in “litigating” a motion to stay discovery (see
7 below), and waited until the clock had run for 48 days (from November 1-December
8 19) to announce its contemplation of an anti-SLAPP initiative.

12 **III. THE REVELATIONS FROM MR. FIKHMAN’S DEPOSITION** 13 **PRESENT A “SPECIAL CIRCUMSTANCE” PER *KETCHUM***

14 Worst of all in TP-Link’s high-powered arsenal was the representation to this
15 court that the “at-issue pre-suit communications with Amazon were unquestionably
16 in furtherance of TP-Link’s litigation conduct.” That representation was false,
17 pivotal, and demands accountability. It had no place in TP-Link/Amazzia’s brief.

19 The instant case is similar to *Leavitt v. Int’l Paper Co.*, 2015 U.S. Dist.
20 LEXIS 6924, at *7 (C.D. Cal. 2015), a Rule 11 case, where counsel’s false
21

23 ⁷ When this case was ripe for Rule 26(f) conference, TP-Link surprisingly sought to
24 avoid an actual conference, deferring to an exchange of case management
25 documents. The assigned reason for this departure from rule was: “[w]e want to
26 avoid a repeat of our previous conferences, which have been little more than Careful
27 Shopper spending an unreasonable amount of time pressing irrelevant and/or legally
28 dubious positions.” Undersigned responded on October 27th: “I would not dare
appear before Judge Staton not having personally conferred.” And so it was... but
with no mention of a contemplated anti-SLAPP motion.

1 representation to the court drew the following language from Judge Otis Wright II:
 2 “[n]ot only is counsel's representation false, but the request for sanctions only adds
 3 to the egregious nature of the motion.” TP-Link/Amazzia’s stated position
 4 (“unquestionably in furtherance of litigation conduct”) is contradicted by Mr.
 5 Fikhman’s subsequent testimony and TP-Link now magnifies the egregiousness of
 6 its misrepresentation by seeking fees for all hours in the case since November 12,
 7 2019. TP-Link accepts no responsibility.

10 **IV. UNNECESSARY & UNREASONABLE**

11 **A. Case in Point: TP-Link’s Unnecessary Stay Motion**

12 Upon December 19, 2019 notice to Careful Shopper of an anticipated anti-
 13 SLAPP motion, Careful Shopper counsel had a knee-jerk reaction, that same day,
 14 that discovery must continue. TP-Link uses that day’s knee-jerk reaction to argue
 15 that Careful Shopper is responsible for wasteful litigation respecting which TP-Link
 16 seeks compensation. But the question is not what undersigned exclaimed in utter
 17 surprise on 19 December; rather, the question is why TP-Link waited until
 18 December 19th to disclose a coming anti-SLAPP motion; until January 7th to half-
 19 heartedly suggest a stay motion; and until January 21, 2020 to state an intent in
 20 earnest to file a stay motion. If TP-Link viewed counsel’s knee-jerk as a genuine
 21 statement of position . . . why did it not immediately demand a Local Rule 7-3
 22 conference on the issue, on December 19th, and communicate its grounds for a stay?
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On January 21, 2020 at 4:50 PM TP-Link counsel advised undersigned that TP-Link *intended* to file a motion to stay discovery proceedings pending decision on the anti-SLAPP motion: “As discussed during our January 9 conference, we intend to file a motion to stay discovery as to the claims asserted in the amended counterclaims pending resolution of the motion to strike/dismiss.” At 5:13 PM undersigned advised TP-Link counsel: “Let me get back to you tomorrow.” At 9:54 a.m. the next morning undersigned researched TP-Link’s request for a stay, mindful of (i) this court’s practice to independently assess stipulations to stay, and (ii) the consequences under Local Rules, procedures and case law of lacking due diligence. Counsel’s real time file log indicates a research session that lasted 18 minutes or so until about 10:12 a.m., and yielded four (4) cases indicating that CDCA would generally stay discovery under the existing circumstances in antitrust and anti-SLAPP situations:

| | |
|--|--------------------------|
| Stay of Discovery | Jan 22, 2020 at 10:12 AM |
| • BAC Home Loan Servicing, LP v. Advanced Funding Strategy | Jan 22, 2020 at 9:54 AM |
| • Mireskandari v. Daily Mail, 2013 U.S. Dist. LEXIS 199145 | Jan 22, 2020 at 10:12 AM |
| • Skellerup Indus v. City of Los Angeles, 163 F.R.D. 598 | Jan 22, 2020 at 9:58 AM |
| • Vista Del Sol Health Care Servs. V. NLRB, 2014 U.S. Dis | Jan 22, 2020 at 10:07 AM |

(See copy of actual document log, Exhibit 4 hereto)

At 10:16 a.m. on January 22, 2020 undersigned wrote to TP-Link counsel as

1 follows:

2 I have done some poking around into motions to stay discovery in the CDCA. It
3 does appear that TP-Link has substantial grounds to obtain a stay. Let's work this one
4 out and not put you, us or the court to needless expense.
5

6 As the court can see, Careful Shopper ascertained within 18 minutes, "first thing in
7 the morning," that the parties should jointly seek a stay of discovery proceedings and so
8 advised TP-Link counsel within minutes thereafter. Unfortunately, TP-Link had done a great
9 deal of unnecessary work on a Motion to Stay, from January 7-9, 2020, 10.4 hours *before*
10 ever mentioning a stay motion, and then for three days from January 19-21, 2020, before
11 advising undersigned of its *intent* to file such a motion. Incredibly, TP-Link seeks
12 compensation for preparing a motion to stay discovery for 43.7 hours-- \$17,767.50.
13

14 Staggering! Indeed, 10.4 hours were expended before even requesting a Local
15 Rule 7-3 conference. Whereas Careful Shopper was able to identify four (4) cases of
16 decisive import in 18 minutes to *avoid* needless expense, TP-Link spent 10.4 hours
17 of definitive research, from what appears, preparatory to *incurring* needless
18 expense. There was no emergency requiring extensive pre-motion research before
19 "thorough" discussion of "contemplation," as specified in Local Rule 7-3. And,
20 manifestly contrary to Local Rule 7-3, TP-Link did not use the fruits of 10.4
21 research hours to "thoroughly discuss" its contemplated stay motion in the
22 disingenuous conference of January 9th.
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1 Although TP-Link counsel references a “discussion” of a possible stay motion
2 during a Rule 7-3 conference initially set solely for a discovery matter on January
3 9th, the “discussion” was nothing more than a brief mention, at most initiating a
4 conversation. TP-Link also placed on agenda a Rule 11 Motion discussion in the
5 Rule 7-3 conference, which motion was never warranted or filed. The matter of a
6 discovery stay was not “thoroughly” discussed, and much of such a motion’s
7 “substance” was not revealed, contrary to Local Rule 7-3. We recall that the
8 “discussion” was not left in anything resembling a final decisional mode. As
9 demonstrated on January 21-22, 2020, undersigned would not refuse to cooperate in
10 a stay given reasonable notice of intended motion practice and citation of relevant
11 legal support, subject to due diligence as to the court’s customary view of staying
12 discovery proceedings. TP-Link not infrequently suggests courses of conduct,
13 conspicuously omitting to provide Careful Shopper with good cause to cooperate.
14

15 During the period of January 9-22, 2020 undersigned counsel was in almost
16 daily email contact with TP-Link counsel. Almost all contact related to intensive
17 discovery efforts which TP-Link never resisted on the basis of an impending stay
18 motion. As all know, Careful Shopper could cease discovery efforts only at
19 considerable peril in Judge Staton’s or Magistrate-Judge Scott’s courtroom, unless
20 and until discovery is actually stayed. Despite frequent interactions TP-Link counsel
21 never mentioned the stay issue . . . not once. From the January 9 Local Rule 7-3
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1 conference (after already expending 10.4 hours on the task), TP-Link had 10 days to
 2 follow up, if it was interested, on its suggestion of a stay, i.e. *before* spending an
 3 additional roughly 33 hours finally drafting the motion for stay. Instead, TP-Link
 4 allowed the process to wind out, day after day. This is a “special circumstance”
 5 under *Ketchum, supra*.
 6
 7

8 **B. Discussion of TP-Link’s Fee Application**

9 **1. Applicable Law**

10 The starting point for determining an award of attorneys' fees under
 11 §425.16(c) is calculation of the "lodestar" amount, i.e., the product of the "number
 12 of hours reasonably expended multiplied by the reasonable hourly rate." *Ketchum*,
 13 24 Cal.4th at 1134; see *id.* at 1135-36. *Mireskandari v. Daily Mail Gen. Tr. PLC*,
 14 2014 U.S. Dist. LEXIS 201202, at *33-36 (C.D. Cal. 2014). Lodestar may be
 15 adjusted for the novelty and difficulty, skill displayed, preclusion of other
 16 employment, and contingency of payment, *inter alia*. The purpose of such
 17 adjustment is to fix a fee at the fair market value for the particular action. “It is the
 18 burden of the challenging party to point to the specific items challenged, with a
 19 sufficient argument and citations to the evidence." *Premier Medical Mgmt. Systems,*
 20 *Inc. v. Cal. Ins. Guarantee Ass'n*, 163 Cal. App. 4th 550, 564, 77 Cal. Rptr. 3d 695
 21 (2008); *Sentinel Offender Servs., LLC v. G4S Secure Sols. United States, Inc.*, 2017
 22 U.S. Dist. LEXIS 181958, at *21 (C.D. Cal. 2017).
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2. Scope of Compensability

An award of fees is broadly discretionary. Recent cases set the scope of prevailing anti-SLAPP movant fees at the reasonable and necessary services incidental to the anti-SLAPP motion itself. Noteworthy here, there was no hearing, oral argument or other necessary services beyond TP-Link's preparation of a non-novel, straightforward motion to strike and/or dismiss. "The fees awarded should encompass all proceedings directly related to defendants' special motion to strike" *Mireskandari*, *supra* 2014 U.S. Dist. LEXIS 201202 at *2, 2014 WL 12586434, at *4 (C.D. Cal. 2014); *Grant & Eisenhofer, P.A. v. Brown*, 2018 U.S. Dist. LEXIS 227454, at *2-3 (C.D. Cal. 2018).

TP-Link cites (Mem. at 8) *Graham-Sult v. Clainos*, 756 F.3d 724 (9th Cir. Feb. 5, 2014) as illustrating "the broad scope of fees awarded under CCP § 425.16(c)(1)." Undisclosed by TP-Link, upon "subsequent indication from the California courts that [the Ninth Circuit's] interpretation [in *Graham-Sult v. Clainos*] was incorrect," the Ninth Circuit reversed itself, to wit: "[i]n *Graham-Sult v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014), we affirmed a fee award under California's anti-SLAPP statute that included fees for time that the defendants' lawyers spent "not exclusively in pursuit of the anti-SLAPP motion," such as hours 'spent on the motion to dismiss.' But a more recent California case undermines *Graham-Sult* and guides us here." *Century Sur. Co. v. Prince*, 782 F.

1 App'x 553, 558 (9th Cir. 2019).

2 Exemplative applications of the applicable scope of compensability include
3 *Fitbit, supra*, which this court found analogous, where the court awarded \$10,000,
4 opining that 13 hours was an appropriate timeframe to prepare and present a
5 relatively straightforward anti-SLAPP motion. 2018 U.S. Dist. LEXIS 2402, at *26.
6 In *Sparling v. Bank of Am. Bus. Lending Servs.*, 2018 U.S. Dist. LEXIS 226087, at
7 *8-9 (C.D. Cal. 2018) the court awarded \$5,838. Again, even where fee numbers
8 are significantly greater than \$10,000, petitioning counsel sought fees only for work
9 directly related to the special motion to strike.
10

11 In *Kajeet, Inc. v. Qustodio, LLC*, 2019 U.S. Dist. LEXIS 228068 *12 (C.D.
12 Cal. 2019) Judge Kronstadt adjudicated an application for 191.9 hours seeking
13 \$90,552.10. A small allowance was made for local counsel, but the court denied
14 compensation for more than two (2) lawyers on the preparation of the special
15 motion and reply to opposition. The award was \$27,030. Noteworthy, no fees were
16 sought for services exceeding in scope the preparation of and reply on the anti-
17 SLAPP motion itself. In *Christie v. Lester*, 2015 U.S. Dist. LEXIS 189810 at *7
18 (C.D. Cal. 2015), Judge Klausner opined as to anti-SLAPP litigation, including a
19 hearing, “previous cases have determined 50 hours to be reasonable for anti-SLAPP
20 litigation. *Maughan*, 143 Cal. App. 4th at 1249.”
21

22 TP-Link’s request for compensation of \$122,849.50 for substantially all hours
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1 spent on the case from November 12, 2019 calls to mind the words of Judge
 2 Margaret M. Marrow: “[a] fee request that appears unreasonably inflated is a
 3 special circumstance permitting the trial court to reduce the award or deny one
 4 altogether.’ *Ketchum*, 24 Cal.4th at 1137.” *Mireskandari*, *supra* at 2014 U.S. Dist.
 5 LEXIS 201202, at *7.
 6
 7

8 **3. Critique of TP-Link Timesheet (ECF 92-1)**

9 TP-Link seeks compensation at this time for its initial review of and research
 10 the state law counterclaims on November 12, 2019 (1.8 HFA), 11/13 research of
 11 those counterclaims (1.3), 11/13 “strategize vis-à-vis those counterclaims (1.5 HFA,
 12 2.5 PC, 1.5 OHT), 11/14 confer re potential defenses (HFA .6). None of this work
 13 (heavily block billed) would seem compensable. It is the anti-SLAPP motion –not
 14 the case—that is compensable. Contrary to *Kajeet*, *supra*, TP-Link seeks
 15 compensation for three (3) attorneys on all major task areas, routinely duplicative
 16 tasks, and with no indication in the timesheet of a need beyond two (2) attorneys on
 17 any aspect of the anti-SLAPP motion. Three attorneys per task was the routine.
 18
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22 Discovery is non-compensable as unrelated to the anti-SLAPP motion.⁸

23 Discovery is not compensable because it is not directly related to the anti-SLAPP

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 25 ⁸ For example, discovery hours were billed on 11/21,24 (.9), 25 (.4), 26 (.2), 12/1
 26 (.2), 12/12 (4.0), 12/13 (3.9)(1.4), 12/15 (.7), 12/16 (.3), 12/19 (3.5), 12/20 (1.0 +
 27 1.7 [block billed]), 12/22 (1.1), 12/24 (1.8). This cycle would repeat itself when
 28 discovery deadlines and responses to deficient discovery responses presented
 themselves. E.g. from 1/13/20 to 1/20/20 TP-Link logged approximately 13.3 hours
 of discovery related matters for which it seeks compensation.

1 motion. E.g., *Mireskandari*, *Grant & Eisenhofer*, *Christie supra*. TP-Link labels
 2 Careful Shopper's discovery efforts as "relentless" in an effort evoke undeserved
 3 sympathy and to be compensated therefore; but a high level of diligence, i.e.
 4 "relentlessness" per TP-Link, must be demonstrable under Judge Staton's Procedure
 5 No 17. Careful Shopper sought to use every day so as not to be later criticized.
 6

7
 8 Duplicative and excessive hours are also presented for compensation. For
 9 example, PC and OHT spent four (4) hours on 11/13/19 strategizing to implement a
 10 SLAPP initiative; and then, on 11/14/19, HFA shows .6 hours for "potential
 11 defenses", OHT shows 4.0 for anti-SLAPP research, and PC shows 3.3 hours for
 12 anti-SLAPP research and another .6 for team strategizing . . . 12.5 hours to begin the
 13 SLAPP initiative with overlapping research and strategy sessions amongst three (3)
 14 lawyers. On 12/15 OHT shows further anti-SLAPP research (2.5) in a block billed
 15 entry that includes the CA litigation privilege, while on 11/17 additional SLAPP
 16 research of HFA is executed, i.e. the 3d lawyer performing the same task, for 2.1
 17 hours. This cycle repeats itself, with PC doing CA litigation privilege research of
 18 2.1 hours on 11/18 with no indication as to why this same research per timesheet,
 19 done on 11/17, was inadequate. But the basic CA litigation privilege research was
 20 not yet done: OHT on 11/21 (1.0), PC on 11/21 (2.0). This pathology obtained as
 21 well in the drafting of the anti-SLAPP motion: OHT begins outlining the motion
 22 (5.0) on 11/22, continuing on 11/29 (5.0), and continued on 12/4 (2.5) and 12/5 (3.5)
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1 and 12/6 (6.0) and 12/9 (2.9) and 12/10 (5.0 block billing). At this point OHT was
 2 assigned to draft a letter requesting a Local Rule 7-3 conference: 12/12 (3.0), 12/13
 3 (1.6), with PC's input on 12/18(2.4) and HFA on 12/19 (1.3), i.e three (3) lawyers
 4 on task. As of 12/13 Mr. Tuffaha alone has some 40 hours, pre-drafting of anti-
 5 SLAPP motion, in research, analysis, and outlining of the anticipated motion. The
 6 two partners on the anti-SLAPP initiative have an additional 15 or so hours.
 7

8 *Drafting of the motion has yet to begin and Careful Shopper counsel was still*
 9 *navigating Local Rule 7-2 daily with no idea of what is to come.*
 10
 11

12 Drafting of the motion itself, following about 55 hours of workup, followed
 13 the same three-lawyer, excessive hours pattern seen above.⁹ TP-Link seeks
 14 compensation for about 95 drafting hours (including a few unbundled block billed
 15 hours) vis-à-vis the motion to strike (ECF 62). By adding in the above specified 55
 16 hours of pre-drafting, related endeavors, the total comes to some 145 hours, i.e.
 17 almost 3 times the reasonable hours for an entire anti-SLAPP litigation, typically
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24 ⁹ Drafting began on 12/16 OHT (3.5), 12/18 (2.0), 12/19 (6.3 block billed entry), PC
 25 (1.9 block billed)-HFA (1.2) conf. on 12/19, 12/20 HFA (.5) and HFA (1.7), 12/20
 26 OHT (4.8), PC (1.7), 12/23 HFA (.8), (3.8), 12/23 OHT (.8), (4.7), 12/23 PC (2.2),
 27 (1.6), 12/24 (1.7), (2.1), 12/24 OHT (3.6), 12/25 HFA (3.8), 12/26 OHT (5.0), 12/27
 28 (6.9), 12/28 HFA (.4), 12/29 (2.2) 12/31 PC (1.4), 1/2 HFA (.2)(.5)(.2)(.4), 1/2 OHT
 (6.0), PC (.2)(2.8), 1/3 PC (1.9), 1/16 HFA (.9), 1/16 OHT (5.0), 1/17 (6.4 block
 billed with other items).

1 including all analysis, research, writing and evidence/argument upon hearing.¹⁰ We
 2 submit TP-Link seeks to “leverage the statute to obtain an 'unjust' award.”
 3

4 TP-Link’s excessive fee request, i.e. several times Judge Klausner’s rule of
 5 thumb, is a third “special circumstance,” *Ketchum supra*, the first two special
 6 circumstances being the Motion to Stay Discovery and position/representation on
 7 “litigation conduct.”
 8

9 **V. TP-LINK’S ATTACK ON OPPOSING COUNSEL**

10 Desperate to have this court overlook controlling precedent, TP-Link in note
 11 1 of its application seeks to sully undersigned and plaintiff’s managing member
 12 before the court by reporting on the public record that undersigned and Careful
 13 Shopper’s principal have an improper, long-standing relationship as “partners.”
 14

15 In truth, the relationship which TP-Link thoughtlessly devalues serves the
 16 public interest by enforcing decency in consumer commerce. Mr. Starke has served
 17 as a representative plaintiff in several class actions and has “made the world a better
 18 place” in almost all of them. Nor is the role of public interest lawyer new to
 19 undersigned, who filed the first consumer class action of note in the Northern
 20 District of Ohio in 1971, resulting in a revolution in periodic statement disclosure,
 21 affecting billions of Mastercard and Visa periodic billing statements, made possible
 22
 23
 24
 25

26 ¹⁰ We have approximated the hours for which TP-Link seeks compensation vis-à-vis
 27 its Reply Brief, ECF 78, for services performed thereon from February 11, 2020
 28 through February 21, 2020. Approximately 39.6 hours.

1 by the then-new Truth in Lending Act. Before resuming the consumer class action
 2 practice about 10 years ago, counsel studied—and continues to study—existing
 3 perceptions of such a practice. Undersigned agrees with Judge Easterbrook:

4
 5 Murray tells us that she has filed ‘only’ nine suits; her husband and four
 6 children filed the rest. Still, the Murrays are in this big time. What the district
 7 judge did not explain, though, is why ‘professional’ is a dirty word. It implies
 8 experience, if not expertise. The district judge did not cite a single decision
 9 supporting the proposition that someone whose rights have been violated by
 10 50 different persons may sue only a subset of the offenders.

11
 12 *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

13
 14 SquareTrade, Inc., a subsidiary of Allstate Insurance, was the first desperate
 15 defendant to attempt to poison a court with substantially the information now
 16 advanced by TP-Link (see ECF 92-2, Page ID 1633), in *Starke v. SquareTrade, Inc.*
 17 No. 1:16-cv-07036- NGG (E.D.N.Y), on appeal to the Second Circuit, 913 F.3d 279
 18 (2d Cir. 2019).¹¹ The Second Circuit ignored the crude and cynical tactic employed
 19 there . . . and now here . . . and handed Mr. Starke a landmark decision addressing
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 21
 22
 23

24
 25 ¹¹ See ECF 44 at p.25n.4, Case No.17-2474 (2d Cir. filed 10/30/17) In
 26 *SquareTrade*, however, the tactic was arguably justified to show that Starke was a
 27 sophisticated consumer who could decipher SquareTrade’s labyrinthian maze of
 28 misleading disclosure. Here there is no excuse.

1 the unfairness of inconspicuous disclosures binding consumers to arbitration
 2 agreements. The decision has been followed in the Ninth Circuit. See *Wilson v.*
 3
 4 *Huuuge, Inc.*, 944 F.3d 1212, 1221 (9th Cir. 2019). Mr. Starke and undersigned's
 5 collaboration has contributed important developments in the law as attorney-
 6 client... not as partners.
 7

8 But TP-Link goes farther than merely insulting counsel and attempting to
 9 unfairly influence the court's thinking with suggestive statements, to wit: TP-Link
 10 alleges that undersigned "has also **partnered** with Careful Shopper's owner, Adam
 11 Starke." In so stating, TP-Link counsel has gone too far. On April 5, 2020 (as well
 12 as previously) we advised TP-Link counsel (see Exhibit 5 hereto) against just this
 13 type of behavior: "The local rules [***L.R. 83-3.1.2***] require you and your firm to abide
 14 by . . . Model Rules of Professional Conduct . . . may be considered as guidance: "
 15

16 The Model Rules prohibit a lawyer from engaging in undignified or
 17
 18 discourteous conduct. Such conduct is sanctionable if it is completely without
 19
 20 merit and undertaken primarily to harass or maliciously injure another.

21 Then came footnote 1 to TP-Link's instant memorandum, having absolutely nothing
 22 to do with this case, obliquely suggesting improper financial arrangements between
 23 undersigned and Mr. Starke, and all for the purpose of sullyng undersigned's
 24 credibility and inflaming the court. Court's do not permit such conduct:
 25

26 we decide that Munson could be sanctioned under the district court's inherent
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 28

power . . . Under the circumstances here, Munson's conduct ‘crossed the line from passionate advocacy . . . into sanctionable conduct evincing bad faith.’ *60E. 80th St. Equities, Inc. v. Sapir (In re 60 E. 80th St. [*1329] Equities, Inc.)*, 218 F.3d 109, 117 (2d Cir. 2000) *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1328-29 (11th Cir. 2002). TP-Link’s conduct offends ABA Model Rules 3.1 (assertion of frivolous claims); 4.4 (conduct with no substantial purpose other than to embarrass, delay or burden a third person); 8.4(d) (conduct prejudicial to administration of justice). This is not only a fourth “special circumstance” warranting denial of attorney fees to applicant-TP-Link but, moreover, it is a slight to the honored profession’s integrity . . . all for a fee. (Where was TP-Link’s concern for propriety when undersigned sought *pro hac vice* admission?)

CONCLUSION

If, despite what we view as grounds warranting a vacation of ECF 82, decretal paragraphs 1 and 2 (see ECF 88), and despite the four (4) special circumstances we have highlighted above, the court determines in its discretion to award TP-Link attorney fees, we submit that TP-Link should be awarded 40 hours at a blended rate of the sum of the three lawyers’ hourly rates divided by 3:

$$\$475 + \$475 + \$275 / 3 = \$408.33 \text{ per hour @ 40 hours} = \underline{\underline{\$16,333.20}}$$

Kajeet, Inc. v. Qustodio, LLC, 2019 U.S. Dist. LEXIS 228068 *12 (C.D. Cal. 2019).

Respectfully submitted,

/s/ Mark Schlachet

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**EXHIBITS TO CAREFUL SHOPPER’S BRIEF IN OPPOSITION TO
TP-LINK’S NOTICE OF MOTION AND MOTION TO FIX
ATTORNEYS FEES AND COSTS IN CONNECTION WITH
MOTION TO STRIKE (ECF 92)**

Exhibit 1: Deposition of William Fikhman in *Solu-Med, Inc. v. Youngblood Skin Care Products, Inc.*, Case No. 19-cv-60487 (S.D. FL)
(relevant portions) X-2

Exhibit 2: Verbiage that may have been used when Amazzia submitted a
complaint to Amazon..... X-8

Exhibit 3: Declaration of William Fikhman filed March 30, 2020 in *Thimes Solutions, Inc. v. TP-Link USA Corporation, et al*, Case 2:19-cv-10374-PA-E, ECF 101-23 X-10

Exhibit 4: Counsel’s real time file log for research session January 22, 2020
..... X-16

Exhibit 5: Email segment of April 5, 2020, Mark Schlachet to Heather F. Auyang, Esq., addressing ethical concerns..... X-18

EXHIBIT 1

EXHIBIT 1: Deposition of William Fikhman in *Solu-Med, Inc. v. Youngblood Skin Care Products, Inc.*, Case No. 19-cv-60487 (S.D. FL)
(relevant portions)

Case 0:19-cv-60487-RKA Document 107-1 Entered on FLSD Docket 03/06/2020 Page 28 of 110

PMK WILLIAM FIKHMAN 30(b)(6), Confidential
SOLU-MED, INC., vs YOUNGBLOOD SKIN CAREDecember 10, 2019
1-4

| | |
|---|--|
| <p>Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF FLORIDA 3 4 SOLU-MED, INC.,) 5 Plaintiff,)Case No. 6 vs.)0:10-cv-60487 7 YOUNGBLOOD SKIN CARE PRODUCTS) 8 LLC,) 9 Defendants.) 10 11 * * * CONFIDENTIAL * * * 12 13 VIDEOTAPED 30(b)(6) DEPOSITION OF 14 THIRD-PARTY, AMAZZIA, BY AND THROUGH 15 PERSON MOST KNOWLEDGEABLE 16 WILLIAM FIKHMAN 17 18 DECEMBER 10, 2019 19 10:18 A.M. 20 21 16501 Ventura Boulevard 22 Encino, California 23 24 25 Susan Pobor, CSR No. 5132</p> | <p>Page 3</p> <p>1 APPEARANCES (CONTINUED): 2 3 VIDEOGRAPHER: DANIEL ROCCO 4 5 ALSO PRESENT: JASON TOTH 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> |
| <p>Page 2</p> <p>1 APPEARANCES OF COUNSEL 2 3 ON BEHALF OF PLAINTIFF, SOLU-MED, INC.: 4 GOODMAN & SAPERSTEIN 5 BY: STANLEY R. GOODMAN, ESQ. 6 666 OLD COUNTRY ROAD 7 SUITE 200 8 GARDEN CITY, NEW YORK 11530 9 (516) 227-2100 10 GSESQ@AOL.COM 11 -- AND -- 12 BLACK LAW, P.A. 13 BY: KELSEY K. BLACK, EQ. 14 (Via telephone) 15 1401 East Broward Boulevard 16 Suite 204 17 Fort Lauderdale, Florida 33301 18 (954) 320-6220 19 Kelsey@kkbpa.com 20 21 ON BEHALF OF DEFENDANT, YOUNGBLOOD SKIN CARE 22 PRODUCTS LLC: 23 24 COLE, SCOTT & KISSANE, P.A. 25 BY: JONATHAN VINE, ESQ. 222 Lakeview Avenue Suite 120 West Palm Beach, Florida 33401 (561) 383-9200 Jonathan.Vine@csklegal.com 20 21 ON BEHALF OF THIRD-PARTY, Amazzia: 22 BURKHALTER KESSLER CLEMENT & GEORGE LLP 23 BY: ANDREW M. CUMMINGS, ESQ. 24 2020 Main Street 25 Suite 600 Irvine, California 92614 (949) 975-7500 Acummings@bkcgllaw.com</p> | <p>Page 4</p> <p>1 INDEX 2 3 WITNESS EXAMINATION PAGE 4 WILLIAM FIKHMAN BY MR. VINE 7 5 BY MR. GOODMAN 108 6 BY MR. VINE 164 7 8 9 EXHIBITS 10 EXHIBITS DESCRIPTION PAGE 11 Exhibit 1 Notice of Deposition, 10 12 attaching a document 13 entitled "Scheduled 'A' 14 Areas of Inquiry 15 Exhibit 2 Document entitled, 26 16 "Youngblood Skin Care 17 Products, LLC 18 Distributor Agreement 19 Exhibit 3 Amazon Management Agreement 29 20 between Youngblood and 21 Amazzia 22 Exhibit 4 Condition Guidelines from 42 23 Amazon 24 Exhibit 5 Document entitled, 45 25 "Cosmetics & Skin/Hair Care" 21 Exhibit 6 Document entitled, Amazon 50 22 Product Authenticity and 23 Quality 24 Exhibit 7 Document entitled, "Amazon 68 25 Anti-Counterfeiting Policy"</p> |

**EXHIBIT 3**800.211.DEPO (3376)
EsquireSolutions.com

Exhibit 1 to Brief in Opposition to Plaintiff's Motion to Fix Attorney Fees, p. 1

Case 0:19-cv-60487-RKA Document 107-1 Entered on FLSD Docket 03/06/2020 Page 30 of 110

PMK WILLIAM FIKHMAN 30(b)(6), Confidential
SOLU-MED, INC., vs YOUNGBLOOD SKIN CAREDecember 10, 2019
9-12

| | |
|---|--|
| <p>Page 9</p> <p>1 Q. Okay.</p> <p>2 And, lastly, any time you need a break,</p> <p>3 feel free to let your counsel know, and we can take</p> <p>4 a break.</p> <p>5 Okay?</p> <p>6 A. Okay.</p> <p>7 Q. Okay. Great.</p> <p>8 Can you give me your current address?</p> <p>9 A. Business or --</p> <p>10 Q. Business is fine.</p> <p>11 A. 7040 Darby Avenue, Reseda, California,</p> <p>12 91335.</p> <p>13 Q. Where -- Where are you employed?</p> <p>14 A. Auction Brothers, Inc. doing business as</p> <p>15 Amazzia.</p> <p>16 Q. Okay.</p> <p>17 And are you one of the owners of the</p> <p>18 company?</p> <p>19 A. I am.</p> <p>20 Q. Okay.</p> <p>21 How many owners are there at the company?</p> <p>22 A. Three.</p> <p>23 Q. And who are the owners?</p> <p>24 A. Mike Fikhman, George Fikhman and</p> <p>25 William Fikhman.</p> | <p>Page 11</p> <p>1 A. -- from Cal State Northridge. Cal State</p> <p>2 Northridge.</p> <p>3 Q. Okay.</p> <p>4 And how long have you been working at</p> <p>5 Amazzia?</p> <p>6 A. The corporation is 15 years old. So the</p> <p>7 entire 15 years.</p> <p>8 Q. Okay.</p> <p>9 A. It has not always been Amazzia.</p> <p>10 Q. Okay.</p> <p>11 So why -- why don't we start --</p> <p>12 How -- When was -- When did Amazzia become</p> <p>13 first incorporated or began?</p> <p>14 A. Amazzia became a dba of Auction Brothers</p> <p>15 maybe two years ago.</p> <p>16 Q. Okay.</p> <p>17 Prior to that, it was some -- it was</p> <p>18 Auction Brothers?</p> <p>19 A. It was just Auction Brothers.</p> <p>20 Q. What -- What was the nature of the business</p> <p>21 for Auction Brothers?</p> <p>22 A. It was Amazon reselling.</p> <p>23 Q. Amazon.</p> <p>24 And -- And why --</p> <p>25 About two years ago, you said, 2017?</p> |
| <p>Page 10</p> <p>1 (Whereupon Exhibit 1 was marked</p> <p>2 for identification)</p> <p>3 BY MR. VINE:</p> <p>4 Q. Okay. We've marked as Exhibit 1 -- it's a</p> <p>5 Notice of Deposition with an Exhibit A with areas</p> <p>6 that we seek to depose you on.</p> <p>7 Can you take a look at it and tell me if</p> <p>8 you've seen this before?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. If you could stay on the third page.</p> <p>11 The third page is an exhibit that lists</p> <p>12 areas of a potential inquiry.</p> <p>13 Correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 Do you -- Are you the designee from Amazzia</p> <p>17 to answer questions regarding those listed on -- in</p> <p>18 Exhibit 1?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 Can you just give me a brief description of</p> <p>22 your educational background?</p> <p>23 A. I have a bachelors in accounting and</p> <p>24 business honors --</p> <p>25 Q. Okay.</p> | <p>Page 12</p> <p>1 Is that correct?</p> <p>2 A. (No audible response).</p> <p>3 Q. You have to respond verbally.</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 About two years ago?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 And why did it change its name to "Amazzia"</p> <p>10 or use a dba?</p> <p>11 A. We created -- We pivoted the business</p> <p>12 model towards more of the Amazon brand protection</p> <p>13 and management model.</p> <p>14 Prior to that, it was just purely</p> <p>15 reselling products on Amazon without any exclusive</p> <p>16 relationships with brands.</p> <p>17 Q. Okay.</p> <p>18 When did you begin --</p> <p>19 Strike that.</p> <p>20 Would you agree with me that you handled</p> <p>21 brand protection prior to converting into the name</p> <p>22 of "Amazzia"?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 When did Auction Brothers or the</p> |

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Case 0:19-cv-60487-RKA Document 107-1 Entered on FLSD Docket 03/06/2020 Page 41 of 110

PMK WILLIAM FIKHMAN 30(b)(6), Confidential
SOLU-MED, INC., vs YOUNGBLOOD SKIN CAREDecember 10, 2019
53-56

| | |
|---|--|
| <p>Page 53</p> <p>1 allowed by another policy, because you can't sell 2 cosmetic products as used. 3 BY MR. VINE: 4 Q. So all -- 5 And that's a great segue. 6 All these policies that Amazon has, they 7 all kind of work hand-in-hand together. 8 Correct? 9 A. Yes. 10 Q. And when you provide your brand protection 11 services, do you rely on these guidelines when you 12 provide advice to your clients? 13 A. Absolutely. 14 Everything we do is based on these 15 guidelines that Amazon sets forward. 16 Q. And you take your job very seriously. 17 Correct? 18 A. Yes. 19 Q. And you provide the protection to your 20 clients in a diligent way. 21 Correct? 22 MR. GOODMAN: Objection. 23 THE WITNESS: Correct. 24 BY MR. VINE: 25 Q. Okay.</p> | <p>Page 55</p> <p>1 That's it. 2 Q. Okay. 3 So if you look back at Exhibit 6, which is 4 the Amazon guidelines regarding product 5 authenticity and quality -- 6 Why don't you read out loud for the ladies 7 and gentlemen of the jury the first sentence, 8 what's important for Amazon. 9 A. "Customers trust that they can always buy 10 with confidence on Amazon. As a seller it's 11 important to understand Amazon's guidelines on 12 product quality and authenticity". 13 Q. Okay. 14 So it's important based -- 15 Would you agree with me that it was 16 important for sellers such as Solu-Med to comply 17 with the Amazon product authenticity and quality 18 guidelines? 19 A. Yes. 20 Q. Okay. 21 And, in fact, Amazon requires that. 22 Correct? 23 A. Yes. 24 Q. Does this guideline indicate whether Amazon 25 enforces sellers who violate their policies?</p> |
| <p>Page 54</p> <p>1 I mean, you don't just report people for 2 the fun of reporting people to -- 3 A. Absolutely not. 4 All of our reporting processes are 5 actually very methodical and organized and 6 strategic. 7 Q. Okay. 8 So can you talk about how they're 9 methodical and strategic for -- for the ladies and 10 gentlemen of the jury? 11 A. Sure. 12 So -- We -- We have a directive from the 13 brand of, in this case, removing any sellers that 14 are not authorized. 15 We have a team that works daily, 24/7/365. 16 Half of our team is here in L.A., and half 17 of our team is overseas in the Philippines. So we 18 literally have 24 coverage -- 24/7 monitoring and 19 coverage of the listings. 20 And so we are looking at pages at all 21 times of the day and taking snapshots and seeing if 22 somebody is selling and breaking these rules. Then 23 we're moving forward to proving that to Amazon, and 24 removing them from the marketplace. 25 And if they --</p> | <p>Page 56</p> <p>1 A. It does say -- 2 In the "Enforcement" section at the 3 bottom, it does say that if you violate these 4 policies, Amazon may: Cancel your listings; limit, 5 suspend, or block your ability to sell [sic] 6 products; or suspend or block your entire [sic] 7 ability to sell on Amazon, which is what happened 8 in Solu-Med's case here. 9 Q. Okay. 10 So if a company such as Solu-Med violated 11 Amazon's policies, Amazon reserved the right to do 12 any of those three things? 13 A. Correct. 14 Q. Okay. 15 And, in fact, it also indicates on the next 16 page, two other additional items. 17 Is that correct? 18 A. Yes. 19 It can remove or dispose of your FBA 20 inventory, or withhold your payments. 21 Q. What's FBA inventory? 22 A. "FBA" stands for fulfilled by Amazon, and 23 it means that a seller such as Solu-Med would ship 24 their inventory into Amazon's fulfillment centers, 25 and Amazon holds the inventory in their custody and</p> |

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Exhibit 1 to Brief in Opposition to Plaintiff's Motion to Fix Attorney Fees, p. 3

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PMK WILLIAM FIKHMAN 30(b)(6), Confidential
SOLU-MED, INC., vs YOUNGBLOOD SKIN CAREDecember 10, 2019
85-88

| | |
|--|---|
| <p style="text-align: right;">Page 85</p> <p>1 You're all set?</p> <p>2 A. Yes. I just didn't want confusion around</p> <p>3 is Solu-Med a seller.</p> <p>4 We had it as Life and Health Source, and</p> <p>5 that's --</p> <p>6 Q. Is Life and Health Source a seller?</p> <p>7 A. Yes.</p> <p>8 Q. And, obviously, the owner of Life and</p> <p>9 Health Source, that would go -- the Seller Policy</p> <p>10 and Code of Conduct would apply.</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 So the seller would be required to comply</p> <p>15 with the Code of Conduct issued by Amazon?</p> <p>16 A. Absolutely.</p> <p>17 Q. And one of the items that Amazon has in the</p> <p>18 first bullet point talks about providing accurate</p> <p>19 information to its customers?</p> <p>20 A. Yes.</p> <p>21 Q. Would selling a product as new without a</p> <p>22 warranty and a guarantee be inaccurate</p> <p>23 information --</p> <p>24 A. No.</p> <p>25 Q. -- to its customers?</p> | <p style="text-align: right;">Page 87</p> <p>1 into the box --</p> <p>2 Q. Okay.</p> <p>3 A. -- on a -- on the platform.</p> <p>4 Q. So it says: "We have researched</p> <p>5 Youngblood's listings and found the following ASINs</p> <p>6 are in violation of our trademark..."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 And that's Youngblood's trademark?</p> <p>11 A. I don't know for sure, but I'm assuming.</p> <p>12 Q. Okay.</p> <p>13 This is an item that was drafted by</p> <p>14 Amazzia.</p> <p>15 Correct?</p> <p>16 A. I don't know for sure.</p> <p>17 I'm -- I'm not deny -- disputing that, but</p> <p>18 I -- I would need a -- if we want to know if that</p> <p>19 trademarks --</p> <p>20 Q. I'm not asking that.</p> <p>21 A. Okay.</p> <p>22 Q. I changed --</p> <p>23 Youngblood hired Amazzia for brand</p> <p>24 protection.</p> <p>25 Correct?</p> |
| <p style="text-align: right;">Page 86</p> <p>1 A. That would be a -- That would be</p> <p>2 inaccurate.</p> <p>3 Q. Okay.</p> <p>4 (Whereupon Exhibit 9 was marked</p> <p>5 for identification)</p> <p>6 BY MR. VINE:</p> <p>7 Q. Marked as Exhibit 9 is a complaint that was</p> <p>8 submitted to Amazon on behalf of Youngblood.</p> <p>9 After you've had an opportunity to review</p> <p>10 this, let me know when you're done.</p> <p>11 A. I'm done.</p> <p>12 Q. Okay.</p> <p>13 This is a complaint --</p> <p>14 What is this?</p> <p>15 Sorry.</p> <p>16 A. This looks like verbiage that may have</p> <p>17 been used when we submit a complaint to Amazon.</p> <p>18 Q. All right.</p> <p>19 I understand when you submit it, it's on a</p> <p>20 website platform?</p> <p>21 A. Correct.</p> <p>22 Q. Okay.</p> <p>23 And you input information within specific</p> <p>24 categories?</p> <p>25 A. Correct. We would insert this message</p> | <p style="text-align: right;">Page 88</p> <p>1 A. Yes.</p> <p>2 Q. Amazzia is the one who filed the complaint</p> <p>3 about Solu-Med or Life and Health Source to Amazon.</p> <p>4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 And so if this is the complaint that Amazon</p> <p>8 relied on, this would be the document that was</p> <p>9 drafted by Amazzia.</p> <p>10 Correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 And if you look, it talks about</p> <p>14 authenticity.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And the request was to remove the sellers</p> <p>18 from selling just this product.</p> <p>19 Correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 You weren't asking that the seller's store</p> <p>23 be shut down.</p> <p>24 Correct?</p> <p>25 A. Correct.</p> |

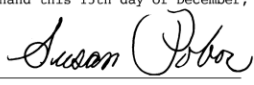
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Exhibit 1 to Brief in Opposition to Plaintiff's Motion to Fix Attorney Fees, p. 4

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PMK WILLIAM FIKHMAN 30(b)(6), Confidential
SOLU-MED, INC., vs YOUNGBLOOD SKIN CARE

December 10, 2019
169-170

| | |
|--|-----------------|
| <p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Page No. ____ Line No. ____ Change to: _____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: _____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: _____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: _____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: _____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: _____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: _____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 [WILLIAM FIKHMAN] [JOB NO. J4663289]</p> | <p>Page 169</p> |
| <p>1 STATE OF CALIFORNIA)</p> <p>2) ss.</p> <p>3 COUNTY OF LOS ANGELES)</p> <p>4 I, SUSAN POBOR, Certified Shorthand Reporter</p> <p>5 No. 5132 for the State of California, do hereby</p> <p>6 certify:</p> <p>7 That prior to being examined, the witness named</p> <p>8 in the foregoing deposition, was duly sworn to</p> <p>9 testify the truth, the whole truth, and nothing but</p> <p>10 the truth;</p> <p>11 That said deposition was taken down by me in</p> <p>12 shorthand at the time and place therein named and</p> <p>13 thereafter reduced by me to typewritten form and</p> <p>14 that the same is a true, correct, and complete</p> <p>15 transcript of said proceedings.</p> <p>16 Before completion of the deposition, review of</p> <p>17 the transcript [] was [] was not requested. If</p> <p>18 requested, any changes made by the deponent (and</p> <p>19 provided to the reporter) during the period allowed</p> <p>20 are appended hereto.</p> <p>21 I further certify that I am not interested in</p> <p>22 the outcome of the action.</p> <p>23 Witness my hand this 15th day of December,</p> <p>24 2019.</p> <p>25 </p> <p>Susan Pobor, CSR No. 5132</p> | <p>Page 170</p> |



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Exhibit 1 to Brief in Opposition to Plaintiff's Motion to Fix Attorney Fees, p. 5

EXHIBIT 2

EXHIBIT 2: Verbiage that may have been used when Amazzia submitted a complaint to Amazon

Case 0:19-cv-60487-RKA Document 104-2 Entered on FLSD Docket 03/05/2020 Page 1 of 1

Name and Contact Info of entity that submitted take down notice:

Complaint ID 5518323151 submitted by RO contact: brandprotection@ybskin.com;
Brand Name Youngblood.

"Hello,

We have researched Youngblood's listings and found the following ASINs are in violation of our trademark, 3812755.

- Counterfeit products are being sold on the following listings
- Please immediate action and remove these sellers currently listing counterfeit product.

According to Amazon's robust and aggressive anti-counterfeit policy, sellers must list items that match the detail pages exactly. The indicated sellers are not selling the authentic products as shown in the ASIN(s) referenced.

We know that Amazon takes product authenticity very seriously and Amazon requires sellers to list items that exactly match the detail pages. Therefore, we respectfully request that Amazon immediately and proactively remove these sellers from the mentioned ASIN(s) and prohibit these sellers from listing against these ASIN(s) in the future.

Thank You,
Youngblood

PLF5 EXHIBIT 5 FOR ID
WENDY J. WRIGHT, CSR
DATE 12-9-19
WITNESS 10th
PAGE 1 OF 1

CONFIDENTIAL AMZN_00003

EXHIBIT 3

EXHIBIT 3: Declaration of William Fikhman filed March 30, 2020 in *Thimes Solutions, Inc. v. TP-Link USA Corporation, et al*, Case 2:19-cv-10374-PA-E, ECF 101-23

Case 2:19-cv-10374-PA-E Document 101-2 Filed 03/30/20 Page 1 of 6 Page ID #:815

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Attorneys for Defendant Auction Brothers, Inc. dba Amazzia

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

THIMES SOLUTIONS INC.

Plaintiff,

vs.

TP-LINK USA CORPORATION,
 MIKHAIL FIKHMAN DBA AMAZZIA,
 PREVAGEN, INC.

Defendants.

And

AUCTION BROTHERS, INC. DBA
 AMAZZIA
 c/o MIKHAIL J. FINKHAM,
 Registered Agent
 19528 Ventura Blvd.
 Tarzana, CA 91356-2917

CASE NO. 2:19-cv-10374-PA-Ex

Assigned For All Purposes To:
 Honorable Percy Anderson
 Courtroom: 9A

**DECLARATION OF WILLIAM
 FIKHMAN IN SUPPORT OF
 DEFENDANT AUCTION
 BROTHERS, INC. dba AMAZZIA'S
 MOTION FOR SUMMARY
 JUDGMENT**

Fed. R. Civ. P. 56

Hearing Date: TBD
 Courtroom: 9A

Second Amended Complaint Filed:
 January 13, 2020

DECLARATION OF WILLIAM FIKHMAN

Exhibit 3 to Brief in Opposition to Plaintiff's Motion to Fix Attorney Fees, p. 1

DECLARATION OF WILLIAM FIKHMAN

I, William Fikhman, declare as follows:

1. I am the Chief Strategy Officer for Defendant Auction Brothers, Inc. dba Amazzia. I have personal knowledge of the facts set forth in this Declaration, and if called as a witness, I could and would testify competently thereto.

2. I have been employed by Auction Brothers, Inc. for approximately the past fifteen years, and I have worked in my current role as Chief Strategy Officer for approximately the past year. My duties and responsibilities as Chief Strategy Officer generally include oversight of sales, management and Amazon strategy. Prior to working in the role of Chief Strategy Officer, I worked as Vice President for approximately 14 years. My duties and responsibilities as Vice President were generally the same as my duties and responsibilities as Chief Strategy Officer.

3. Auction Brothers, Inc. dba Amazzia ("Amazzia") has been in the business of providing brand protection services for approximately four years. Amazzia's brand protection process generally consists of searching for its clients' products for sale on Amazon.com ("Amazon") in order to identify sellers who are not specifically authorized under a distribution agreement to purchase products directly from Amazzia's client(s) and thereafter sell such products (hereafter an "Unauthorized Reseller"). Once Amazzia identifies an Unauthorized Reseller that Amazzia knows is selling products to consumers that lack the same bundle of rights that a consumer would receive from an authorized seller, Amazzia generally notifies Amazon of the counterfeit products in the manner set forth below.

4. One of Amazzia's clients was TP-Link USA Corporation ("TP-Link"). Amazzia has only provided brand protection services for TP-Link, and at no time has Amazzia (including any other dba or "alter ego" of Auction Brothers, Inc.) ever distributed TP-Link's products, nor does Amazzia have any intent to do so, nor

Case 2:19-cv-10374-PA-E Document 101-2 Filed 03/30/20 Page 3 of 6 Page ID #:817

1 does Amazzia (including any other dba or “alter ego”) currently have any plans to
 2 distribute any networking products. As part of its brand protection services, Amazzia
 3 discovered that a company identified on Amazon’s website only as “Universal Goods
 4 and Sales” was selling TP-Link’s 360 TP-Link AC5400 Routers (the “Routers”)
 5 through Amazon. Universal Goods and Sales represented that the Routers it offered for
 6 sale on Amazon were “New” products, despite the fact that Amazzia understood that
 7 Universal Goods and Sales was not an authorized reseller of TP-Link’s Router, and as
 8 such, Amazzia understood that Universal Goods and Sales could not provide to
 9 purchasers of the Routers the same bundle of rights (such as warranty and service) that
 10 an authorized reseller could. In its Amazon posting, Universal Goods and Sales did
 11 not indicate that it was not an authorized distributor of TP-Link products.

12 5. Until Times Solutions, Inc. initiated this litigation, Amazzia only
 13 knew of this seller on Amazon as “Universal Goods and Sales” because that was the
 14 name that this seller used to identify itself on Amazon. Amazzia was unaware of the
 15 true corporate name and location of Universal Goods and Sales until Amazzia came to
 16 learn through this litigation that Universal Goods and Sales is apparently a dba of
 17 Times Solutions, Inc.

18 6. For several years, Amazon has maintained a “Report Infringement”
 19 online form that enables Amazon sellers or their agents to report complaints to
 20 Amazon regarding sellers who are violating intellectual property rights. The form
 21 allows the complaining party to first identify whether the complaint relates to
 22 copyright concerns, patent concerns or trademark concerns. If a complaining party
 23 identifies trademark concerns, then the form provides the complaining party with three
 24 options to choose from, which are: (1) “a product detail page is unlawfully using my
 25 trademark (e.g., in product title, product images, product description), (2) a product or
 26 packaging has my trademark in it, or (3) a product is counterfeit (the product or
 27 packaging has an unlawful reproduction of a registered trademark.” A complaining
 28

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1 party must choose from one of the three options, as Amazon does not provide any
 2 alternative options. In addition to identifying one of the three available options, the
 3 form further allows the complaining party limited space to enter additional
 4 information regarding the more specific basis for the complaint. Amazon generally
 5 sends Amazzia an email through Amazon's internal e-mail communication system
 6 with sellers, confirming that a complaint had been received, but Amazon does not send
 7 a copy of the submission itself and Amazzia does not otherwise maintain any record of
 8 specific complaints made on Amazon's online system.

9 7. Based on the limited information available to Amazzia from
 10 Amazon's online complaint system, and consistent with Amazzia's regular practice,
 11 Amazzia does not have, nor has it ever had, copies of the specific complaints it made
 12 to Amazon regarding Universal Goods and Sales. Moreover, as described above,
 13 Amazon did not provide Amazzia copies of the complaints.

14 8. Although Amazzia does not have a copy of the complaint made to
 15 Amazon regarding Universal Goods and Sales, based on its general business pattern
 16 and practice in connection with brand protection services for reporting counterfeit sales
 17 to Amazon, Amazzia would have used the Amazon Report Infringement Form to
 18 inform Amazon that Universal Goods and Sales was selling "counterfeit" Routers by
 19 choosing the option (3) referenced above (i.e., "a product is counterfeit (the product or
 20 packaging has an unlawful reproduction of a registered trademark.)) and Amazzia
 21 would also have provided additional comments to Amazon to the effect that: "The
 22 seller indicated herein is selling products that do not include the same bundle of rights
 23 that authentic products include. Desired Action: Immediate removal of the seller's
 24 offer of this counterfeit product."

25 9. Amazzia selects the "counterfeit" option on Amazon's Report
 26 Infringement Form as its standard business practice because Amazzia understands that
 27 Amazon's "Condition Guidelines" specify that a product described as "New" must,
 28

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1 among other things, provide that the “Original manufacturer’s warranty, if any, still
 2 applies, with warranty details included in the listing comments.” Because Amazzia
 3 understands that the products that an Unauthorized Reseller like Universal Goods and
 4 Sales sells lacks the original manufacturer’s warranty, Amazzia deems those products
 5 as counterfeit per Amazon’s policies. Attached hereto as Exhibit “A” is a true and
 6 correct copy of Amazon’s Condition Guidelines that I understand were in effect during
 7 the relevant time.

8 10. Amazzia has no reason to believe that its communications with
 9 Amazon regarding Universal Goods and Sales’ sale of the unauthorized Routers were
 10 inconsistent with its above described standard business pattern and practice.

11 11. Once Amazzia submits a complaint to Amazon through its Report
 12 Infringement online form that a seller of goods on Amazon is an Unauthorized Reseller
 13 as described above, Amazzia has no further role in Amazon’s determination regarding
 14 how it will respond to the complaint (if it responds at all) and whether Amazon
 15 ultimately elects to remove the Unauthorized Reseller’s product from Amazon’s site.
 16 Consistent with the above, Amazzia had no further role in any decisions Amazon may
 17 have made regarding Universal Goods and Sales’ ability to sell Routers on Amazon
 18 after Amazzia notified Amazon that Universal Goods and Sales sold counterfeits goods
 19 as described above.

20 I declare, under penalty of perjury of the laws of the United States and the
 21 State of California, that the foregoing is true and correct. Executed on March 27,
 22 2020 at Reseda, California.

23
 24 
 25 WILLIAM FIKHRMAN

EXHIBIT 4

EXHIBIT 4: Counsel's real time file log for research session January 22, 2020





| | |
|--|--------------------------|
| ▼ Stay of Discovery | Jan 22, 2020 at 10:12 AM |
|  BAC Home Loan Servicing_ LP v. Advanced Funding Strateg | Jan 22, 2020 at 9:54 AM |
|  Mireskandari v. Daily Mail_ 2013 U.S. Dist. LEXIS 199145 | Jan 22, 2020 at 10:12 AM |
|  Skellerup Indus. v. City of Los Angeles_ 163 F.R.D. 598 | Jan 22, 2020 at 9:58 AM |
|  Vista Del Sol Health Care Servs. v. NLRB_ 2014 U.S. Dis | Jan 22, 2020 at 10:07 AM |

EXHIBIT 5

EXHIBIT 5: Email segment of April 5, 2020, Mark Schlachet to Heather F. Auyang, Esq., addressing ethical concerns

Finally, today's publication to numerous counsel of purported ethical lapses on my part is not the first instance of your insulting remarks. The local rules require you and your firm to abide by "the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and the decisions of any court applicable thereto. These statutes, rules and decisions are hereby adopted as the standards of professional conduct, and any breach or violation thereof may be the basis for the imposition of discipline. The Model Rules of Professional Conduct of the American Bar Association may be considered as guidance."

The Model Rules prohibit a lawyer from engaging in undignified or discourteous conduct. Such conduct is sanctionable if it is completely without merit and undertaken primarily to harass or maliciously injure another. I believe the Model Rules provide that a lawyer's conduct is frivolous if the conduct serves merely to harass or maliciously injure another. You directly and Prashanth less directly have on numerous occasions accosted and bullied me and others. In your case both instances followed immediately upon your being confronted with questionable conduct: (1) before Magistrate-Judge Levy for arguing issues you had taken off the table in a discovery hearing, and (2) now, telling Judge Staton that "[a]t-issue pre-suit communications with Amazon were unquestionably in furtherance of TP-Link's litigation conduct." As you know, Under Rule 3.1(a)(2) of the California Rules of Professional Conduct a lawyer is prohibited from "present[ing] a claim or defense in litigation that is not warranted under existing law." The pivotal issue of a communication's protected status vis-a-vis a good faith contemplation of litigation had no support in TP-Link/Amazzia's brief aside from TP-Link/Amazzia's representation that the "at-issue pre-suit communications with Amazon were unquestionably in furtherance of TP-Link's litigation conduct." With the knowledge we now have of Amazzia's "methodical" language, it is more probably than not that the at-issue communications did not meet the requirements of *Neville and Sparrow, supra*, which TP-Link/Amazzia cited as applicable authority. ECF 62 at p.9. It appears that the anti-SLAPP defense, and particularly the quoted representation, was not warranted by existing law.

I asked TP-Link for nothing, zip, zota in exchange for a dismissal of the antitrust counterclaim. Hence, I can't imagine what prompted you to suggest that I am devising some sort of bargain or conditions for the dismissal.

My advise to you and Prashanth is moderate.

Best,

Mark